IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 12247 of 2007(G)

PETITIONER:

P.A.JIHAZ , S/O.P.K.ABDUL RAHMAN,
AGED 38 YEARS,RESIDING AT GALAXY HOUSE,
DESABHIMANI ROAD, ELAMKULAM VILLAGE,
KALOOR DESOM, ERNAKULAM DISITRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE LOCAL SELF GOVERNMENT (M) DEPARTMENT, GOVT. SECRETRIAT, THIRUVANANTHAPURAM.

2. THE CHIEF TOWN PLANNER, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. THE REGIONAL TOWN PLANNER, THE REGIONAL TOWN PLANNING OFFICE, ERNAKULAM.

4. THE CORPORATION OF KOCHI, REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE, KOCHI-11.

BY R1 TO R3 BY GOVT. PLEADER SMT.T.B.REMANI
R4 BY ADV.SRI.S.RAMESH BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J

W.P.(C) .12247 OF 2007

Dated this the 10th day of April, 2007

JUDGMENT

The petitioner, a builder engaged in construction of buildings within the area of the 4th respondent Corporation is aggrieved by the rejection of his application dated 10.8.2006 for building permit on the ground that the same was violative of structure plan going by the Government Order dated 28.8.2006.

2. The petitioner claims that all statutory provisions, particularly Kerala Municipal Building Rules, 1999 which was being adhered to by the local bodies while considering approval of plans for building construction, have been complied with by him. The petitioner refers to an order by which the Government clarified that the provisions relating to Floor Area Ratio in the building Rules will prevail over the provisions in the structure plan. He submits that the

subsequent order of the Government cancelling the earlier order is wrong and misconceived and the same has been quashed by this court by judgment in W.P.(C)No.25478/06 and this court has directed that all applications for building permit received prior to 28.08.2006 shall be considered applying the Floor Area Ratio permitted under the KMB Rules 1999 and not the structure plan 1991.

3. Sri.S.Ramesh Babu, standing counsel takes notice on behalf of the 4th respondent Corporation. Government Pleader takes notice on behalf of other respondents.

4. Having regard to the contentions raised, I find force in the contention of the learned counsel for the petitioner that the issue is covered by the judgment in W.P.(C) No.25478/06. It is clear from Ext.P1 order of rejection that the application for building permit was submitted on 10.8.2006 which is earlier to the cut off date 28.8.2006, the

date on which the Government cancelled the clarificatory order.

This writ petition accordingly will stand allowed issuing the following directions. Ext.P1 is quashed and the 4th respondent is directed to pass fresh orders on the application for building permit and the plan submitted by the petitioner for approval in the light of the directions contained in the judgment in W.P.(C)No.25478/06. The petitioner will produce a copy of the judgment in W.P.(C)No.25478/06 also before the 4th respondent. The 4th respondent will pass fresh orders, at any rate, within three weeks of receiving a copy of this judgment and the judgment in W.P.(C)No.25478/06.

Sd/-
PIUS C. KURIAKOSE
(JUDGE)

sk1/

//true copy//

P.S. to Judge.

PIUS C. KURIAKOSE, J

W.P.(C) .12247 OF 2007

JUDGMENT

10th April, 2007